Crl.A. 54/2002
BEFORE
THE HON'BLE MR JUSTICE P.G.AGARWAL

Heard Mr.S.Chouhan, learned counsel for appellant and Mr.D,Saikia, learned P.P., Assam.

This appeal is directed against judgment and order dated 15.12.2001 passed by the learned Ad hoc Additional Sessions Judge, Darrang, Mangaldai in Sessions Case No.15(DMPT)/2001 convicting the accused appellant under Section 302 IPC and sentencing him to undergo rigorous imprisonment for 7 years and to pay fine of Rs.3000/-, in default, to undergo imprisonment for another 3 months under Section 304 Pt II IPC and hence the present appeal.

This is a case of patricide. The accused/appellant Layan Boro stands convicted under Section 302 Pt IPC for causing death of his father Kamiram Boro. The accused/appellant used to reside with his father and mother in the same house. On 09.04.1994 there was some quarrel between the father and the son and the accused assaulted his father causing his death.

Postmortem of the dead body was conducted by Dr.K.C.Das (PW-4) who found as follows :-

A dead body of a male aged about 45 yeaers with eyes closed, mouth closed, rigormortis present.

Injury No.1: A cut injury (10cm x 5 cmx4 cm) on the left side of the neck including skin fassa, muscles, great vessels, nerve trackion and usupagus.

2. An abrasion seen on the back at left side.

Injuries are ante mortem in nature.

Opinion : In my opinion, the cause of death was due to hemorrhage and shock as a result of injuries sustained.

In the opinion of the doctor, death was due to shock and hemorrhage resulting from the injuries sustained.

As regards the death of the deceased as a result of the injury on his neck, there is evidence of PW-6, the wife of the deceased and mother of the accused appellant, as well as co-villagers namely Boloram Daimari (PW-1), Niron Daimary (PW-2) and Ranjit Narzary (PW-3), as well as Matilal Mahakata, the village Headman (PW-5). In view of the overwhelming oral as well as medical evidence on record, the learned trial Court has rightly held that this a case of homicidal death and the above findings is not in challenge before us.

The entire prosecution case hinges on the extra-judicial confession made before the mother, who is the other inmate of the house and the confession of the accused appellant recorded before the CW-1, the Judicial Magistrte 1st Class, Udalguri. The wife of the deceased and mother of the appellant has deposed about killing of her husband, but except the incident, she did not say as to who killed her husband although she has deposed about the presence of only three persons in the house at the relevant point of time i.e. herself, her husband and the accused appellant. She has been declared hostile by the prosecution.

PW-2 Niren Daimari, has deposed that on the date of occurrence, the accused came to his place and told him that he has killed his father. PW-2 is the own maternal uncle of the accused/ appellant. Whereupon the PW-2 came to the house of the accused and saw the dead body lying with cut injury on the neck of the deceased. Thereafter, he took the accused to the police station and lodged the FIR.

CW-1, the Executive Magistrate Shri L.C.Dey, who recorded the confession of the accused Ext-6. We find that the learned Magistrate had taken all necessary precaution of cautioning the accused and explained the aspect to the accused appellant that in case he decline to confess, he shall not be sent back to police for further interrogation. We find that the evidence of CW-1 has not been challenged by way of cross-examination. The confession reads as follows:

I am a poor man and I maintain my family of four by working as day labour by cutting firewood from the jungle. My father, not very old, but he does not work and he always create nuisance by consuming alcohol on the date of occurrence on 09.04.1994. I returned from the jungle after cutting firewood. I saw my father under the influence of liquor chasing my mother with a dao in his hand. Whe

n I tried to catch hold of the father, the later tried to assault me with the dao and in the process, the father sustained injury on the neck and fell down.

We find that in the present case, confession has been corroborated on material particulars by the evidence of PW-6 as well as the medical evidence as regards the nature of injury and the weapon used. In this case, we also find that the weapon, dao was produced at the police station by PW-2 and the same has been exhibited as Mat. Ext.2.

On perusal of the evidence on record, we have no hesitation to hold that it was the accused appellant, who caused the death of the deceased.

The next question that falls for our consideration is, whether the accused had any intention to cause death. The learned trial Court has held that there was provocation from the conduct of the deceased and therefore the accused ought to have been protected under Section 300 I.P.C. and convicted him under Section 304 Pt-II I.P.C. (this must have been done in mistake as the sentence has been imposed under Section 304 Pt-II I.P.C.). On consideration of facts of same or less identical case Rajen Behra v State of Assam, 2003 (2) GLT 632 where conviction was altered to 304 Pt. II IPC, we affirm the order of conviction under Section 304 Pt II IPC.

On consideration of the submission and the age of the accused and the facts and circumstances of the case, we reduce the sentence to imprisonment for 3 years and to pay a fine of Rs.1000/-, in default, to undergo further imprisonment for one month.

With the above modification of the sentence the appeal stands disposed of.

Sent down the records to the learned Sessions Judge, Darrang who shall take the accused into custody forthwith to serve out the sentence and to pay fine.